

**Newton Planning Board  
September 21, 2011**

The regular meeting of the Newton Planning Board was called to order at 7:00 PM on September 21, 2011 by Chairwoman Mrs. McCabe.

**OPEN PUBLIC MEETINGS ACT - FLAG SALUTE - ROLL CALL – RULES**

**PRESENT MEMBERS:**

Mr. Le Frois  
Mr. Flynn  
Mr. Flaherty (Arrived at 8:15 PM)  
Mr. Marion  
Mr. Tharp  
Mrs. Le Frois (Arrived at 7:05 PM)  
Mrs. Diglio  
Mr. Russo  
Mr. Caffrey  
Mr. Hardmeyer  
Mrs. Mattingly  
Mrs. McCabe

**BOARD SECRETARY:**

Kathy Citterbart

**EXCUSED:**

Mr. Torre

**PRESENT PROFESSIONALS:**

Mr. David Soloway, Esq., Board Attorney, from the firm Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, from Harold Pellow & Associates, Jessica Caldwell, Town Planner, from Harold Pellow & Associates.

**CONSIDERATION OF MINUTES**

August 17, 2011

**Mr. Flynn made a motion to approve the minutes from the August 17, 2011, meeting with the correction. Mr. Le Frois seconded the motion.**

**AYE:** Mr. Le Frois, Mr. Flynn, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mrs. Mattingly

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**HISTORIC RESOLUTIONS:**

**HPC-11-2011 – JHM Signs – Block 715, Lot 7 – 40 Park Place**

Applicant is requesting a wood composite 36" x 36" double sided hanging sign to be attached over the front door with a black wrought iron bracket.

**Mrs. Diglio made a motion to approve the Resolution. Mr. Marion seconded the motion.**

**AYE:** Mr. Le Frois, Mr. Flynn, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mrs. McCabe

**HPC-13-2011- The Newton Theatre Co. LLC**

**Block 713 Lot 8 & 9**

**234 Spring Street**

Applicant is requesting to erect a 6 ft. black chain link fence with 6 ft. gate to surround the parking lot.

Mr. Russo stated: I would like consideration for something more decorative than the black chain link for the front. We are looking at some options rather than the wrought iron which would be cost prohibitive. I would be more comfortable in supporting something more decorative, ornamental aluminum type fence for the front portion along Spring Street and leave the 6 ft. chain link fence on the side and the back.

Discussion ensued from the Board on the type and location of fence from the pizzeria.

**Mr. Russo made a motion to approve the application on the condition that the following modifications are made: 6 ft. black chain link fence along rear and side, side black chain link fence to begin at the rear of the adjoining building (also known as A & G Pizza), decorative ornamental aluminum or black powder coated wrought iron decorative fence/gate to front Spring Street, authorizing design & material of fence/gate along Spring Street to satisfaction of the Planning Board Secretary/Zoning Officer. Also in the event the adjoining building is no longer there this property owner has the option of extending the side black chain link fence. Mrs. Le Frois seconded the motion.**

**AYE:** Mr. Le Frois, Mr. Flynn, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mrs. McCabe

**NEW BUSINESS:**

**PBV-11-2011- Jeff & Jenny Lutz**

**Block 103, Lot 2**

**5 Overlook Road**

Applicants requesting permitted conditional use approval for a home occupation.

Mr. Soloway stated: The applicant is not only seeking conditional use but a D3 Variance and because of this the Mayor and Deputy Mayor cannot sit on this application.

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Angela C. Paternostro-Pfister, Esq. with Morris Downing and Sherred, LLP represented the applicant.

Ms. Paternostro-Pfister stated: The applicant is seeking a home occupation for a home office for Jeff Lutz, LLC inside the principal residence. It is a single family residence and it is a conditional use in the R-2 Zone.

**SWORN:** Jeffrey Lutz, 5 Overlook Road, Newton, NJ, Jenny Lutz, 5 Overlook Road, Newton, NJ, Jill A. Hartmann, PP, AICP, 21 Sparrowbush Road, Mahwah, NJ.

Ms. Hartmann gave her qualifications and the Board accepted them.

**Exhibit A-1 to A-5, Photographic Display 5 Overlook Road Extension, prepared by Jill A. Hartmann, PP, AICP, dated September 20, 2011.**

Ms. Paternostro-Pfister asked Ms. Hartmann a few questions about the photos. Ms. Hartmann answered yes to the questions and described the pictures.

Mr. Soloway stated: There is an objector on this case, Mr. Aspero.

Ms. Hartmann stated: This subject site is located in the R-2 district which permits single family residence as a principal use and home occupation as a conditional use. The minimum lot in the R-2 district is 12,750 sq. feet and for the front yard setback of 35 feet. The existing site is 69,696 sq. feet of 1.6 acres which is 5.5 times larger than the required minimum lot size and the house itself is located 84 feet from the gravel road way. This application is for a home occupation to be located within the single family residence and as noted the reason we are before this Board is we don't meet all the conditions of the conditional use home occupation that is permitted. The home occupation is known as Jeff Lutz, LLC and it is a contractor's business with services for pest control and home inspection. The actual work that is being done in the house is administrative, answering phone calls, paying bills, keeping files and ordering supplies. There is no contracting done on the premises. The two pick-up trucks go out to the jobs. The trucks meet the municipalities' definition of commercial vehicles that are permitted to be located in garages which is up to 10,000 lbs.

Ms. Hartmann continued with Ordinance 20-20.2. It outlines the requirements in order to be a home occupation.

Ms. Hartmann went through the Ordinance and pointed out how they meet it and how they do not.

Ms. Hartmann stated: The findings the Board has to make regarding a conditional use variance is that the site proposed for the conditional use continues to be an appropriate use. I submit that the subject site remains an appropriate site for a home occupation. Home occupations are permitted in the R-1, R-2, and the R-3 districts which this lot is. Trucks will be parked in the garage or under the roof canopy and not visible. Visually the site will remain a single family residence without any outward visual appearance of any internal home occupation. For these reasons, I feel the Board can grant the variance.

Ms. Caldwell asked: You stated there will be one full-time employee and one part-time employee, does that violate another section of the home occupation?

Ms. Hartmann stated: No.

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Ms. Pfister questioned Ms. Hartmann on **Exhibit A-2, single family residence with a large pickup truck next to the garage, dated September 20, 2011.**

Mr. Steven Aspero, Esq., 415 Fairmount Avenue, Montclair, New Jersey asked Ms. Hartmann if she knew anything about how the truck in the picture in A-2 is used.

Ms. Hartmann stated: She does know how it is used.

Mr. Aspero asked: Do you know of any business occupation that is under taken in that particular residence?

Ms. Hartmann stated: No.

Chairwoman McCabe opened this portion of the meeting up to the public. With no public coming forward, she closed this portion.

Ms. Pfister called Mr. Lutz who stated: He is the applicant and owner with two services. Home inspection and pest control all under Jeff Lutz, LLC.

Ms. Pfister asked Mr. Lutz to describe to the Board the nature of the pest control business and where it is conducted.

Mr. Lutz stated: We have a business phone number. We take care of pest control issues and they are all offsite. The pesticides are stored according to the NJDEP standards in the two trucks in a locked container which is in provision of my licensing with the statutes that it be required that way.

Ms. Pfister asked: Does NJDEP provide inspections on how you are keeping these chemicals on the truck?

Mr. Lutz stated: Yes and I have been inspected in the past, several times. I have passed all the inspections.

Ms. Pfister asked: Are any of the pesticides ever stored within an accessory structure on the location of the application and are they ever stored within the principal residence?

Mr. Lutz stated: No to both questions.

Mr. Lutz stated: The pesticides never leave my truck until I leave the property to perform services elsewhere.

Ms. Pfister asked Mr. Lutz to describe the home inspection business.

Mr. Lutz stated: We receive phone calls from people purchasing a home. I set up a time for me to go and do the home inspection and I always meet the customer at their home. The services I provide are always offsite except for the administrative part which includes phone calls and paperwork.

Ms. Pfister asked Mr. Lutz to describe the administrative work in terms of the home occupation.

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Mr. Lutz stated: The phones are answered by my wife. She also handles the computers and bookkeeping. All the services in the home office are administrative. We never have customers come to the residence for any of the services I provide.

Ms. Pfister asked Mr. Lutz to describe his general contracting business.

Mr. Lutz stated: Services would be performed offsite at the customer's house. As a general contractor I hire crews to do the work. I am the owner operator and my wife works with me. My wife is the office manager. She answers phones and does paperwork. She is generally at the house while I am at the site. The home office is within our principal residence. There is a separate door to walk into the home office.

Ms. Pfister asked Mr. Lutz to describe the layout of the first floor of his home.

Mr. Lutz described the layout to the Board. This home office is less than 25% of our principal residence space. We have an upstairs to our residence and we have two bedrooms and a bathroom. No capacity of my business is being conducted upstairs in my residence.

Ms. Pfister asked Mr. Lutz to describe the accessory structure to the left of the front door.

Mr. Lutz stated: It is a small building that my wife uses for her art work. It is an art studio. I do not conduct any of my businesses from that structure.

Ms. Pfister asked Mr. Lutz to describe the barn structure.

Mr. Lutz stated: It has a garage on one side. It has a shop area on the other side of the barn and then there is a carport attached to the barn on the right where we keep the smaller service truck. This is where I proposed garaging of the vehicle for the business. There is no other function within Jeff Lutz, LLC at this building.

Ms. Pfister asked: Is your shop for your hobbies?

Mr. Lutz stated: Yes. I have a workbench in there, some tools that I use for the rental properties for maintenance work and maintenance for my own home. None of my customers ever come in this shop.

Ms. Pfister asked: Is the carport where you propose housing the other vehicle you have associated with the business.

Mr. Lutz stated: Yes.

Ms. Pfister asked: Are there any other employees that you have that are not family members?

Mr. Lutz stated: Yes. I have a girl that works for me who helps my wife answer phone calls. She works from home. She is never on the site.

Ms. Pfister asked: The one employee who does come to the site, does he come to site in his own vehicle?

Mr. Lutz stated: Yes and when he comes in to work for the morning, he will take out the service truck from the carport and put his car in the carport. His vehicle is never parked in the front of

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the yard for the day. The vehicle he drives for the business is a smaller pick up. It is a Dodge Dakota and it is less than 10,000 lbs.

Ms. Pfister asked: The vehicle to the left side of the barn is that the vehicle you drive?

Mr. Lutz stated: It is a Ford F150 standard duty truck and it is less than 10,000 lbs.

Ms. Pfister asked: Are any goods or chattels brought to the property?

Mr. Lutz stated: Twice a year via FedEx. No other vehicles come to the property to deliver goods for Jeff Lutz, LLC.

Ms. Pfister asked: How long has the business been conducted out of your home?

Mr. Lutz stated: I have been conducting the business out of my home since the mid 80's and I didn't know I needed approval at that time.

Ms. Pfister asked: The Jeff Lutz, LLC home occupation that is before the Board requesting permission to have approval is that in any way different than from what you have been doing in the past?

Mr. Lutz stated: No.

Mr. Lutz stated: I am not proposing to increase the business and I am not proposing to erect any structures on the property. The uses would not change at all.

Ms. Pfister asked: Do you do any drilling, sawing or milling on the property?

Mr. Lutz stated: No not for Jeff Lutz, LLC. I might do drilling and sawing for myself as a hobby.

Ms. Pfister asked: Please explain when a vehicle would leave and how often they leave the property.

Mr. Lutz stated: After we have our morning meeting, my helper goes out, takes care of pest control items and I would be going out to do a home inspection or two. I usually return to the property in the evening. On a rare occasion, I might come home for lunch.

Ms. Pfister asked: How much is the helper going in and out of the property?

Mr. Lutz stated: Usually he is gone for the day. He would leave in the morning and come back for the evening. It is less likely that he would return for lunch.

Ms. Pfister asked: Is there any signage on the outside of your residence referencing the home office.

Mr. Lutz stated: No. There is no signage.

Ms. Pfister asked: Is it correct that the Ford F150 is being housed in the carport?

Mr. Lutz stated: Yes. There is vegetation surrounding the carport screening it from Overlook Drive.

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Ms. Pfister asked: Would you be agreeable if the Board required you to enclose the carport?

Mr. Lutz stated: Yes.

Chairwoman McCabe asked Mr. Lutz if he owns any other businesses besides Jeff Lutz, LLC?

Mr. Lutz stated: No.

Mrs. McCabe asked: Do you run a business in conjunction with your rentals.

Mr. Lutz stated: No.

Mrs. McCabe asked: What is in the barn?

Mr. Lutz stated: I have some storage in the barn. To the right of the barn is some personal items and on the left side I have a music studio where I play the drums.

Mrs. McCabe asked: You said pesticides are stored in the truck, you get deliveries twice a year and you do not store pesticides outside the truck?

Mr. Lutz stated: That is correct.

Mr. Hardmeyer asked: How do you maintain your road?

Mr. Lutz stated: I have a gentleman's agreement with Mr. McConnell who lives past me where I would plow the whole thing. It is almost a .8 of a mile. Lately Mr. McConnell has a nicer plow and he has been doing most of the plowing.

Mr. Hardmeyer asked: What about the gravel?

Mr. Lutz stated: We have a nice agreement. I have taken over the graveling of the driveway. I have taken it as my responsibility to keep the road not too rugged.

Mrs. McCabe raised question to Ms. Caldwell and Mr. Soloway. The application is used strictly for administrative duties but he is storing pesticides in his truck which is a concern with me. Does it comply with the ordinance?

Ms. Caldwell stated: The pesticide portion is addressed by the ordinance. The fact it is stored in his truck does not impact the ordinance. Two trucks, because they are not commercial by nature, are already permitted by the ordinance. They are not regulated by the use.

Mr. Soloway stated: I agree. I do not see anything in the ordinance that prohibits the storage of pesticides. Does the truck have a tank?

Mr. Lutz described how he uses the pesticide and how it is stored in the truck. He explained the ratio of the pesticide with water that is used.

Discussion ensued on the pesticides.

Mr. Soloway stated: There is one item that needs to be complied with and that is the off-street parking in the front yard. Ms. Caldwell brings up an interesting point with the 2<sup>nd</sup> non-family employee. The ordinance is ambiguous. It doesn't say whether the business can have more

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than one outside employee or whether the business can have more than one outside employee on the site. The Board will have to decide but there could be an argument that there is noncompliance with section H because there is more than one home occupation here.

Mr. Soloway read the ordinance. If you read Section F, deliveries can only be by car, station wagon, van or any other four-wheel vehicle. I don't know if UPS or Fed Ex truck meets that definition.

Mr. Marion asked: A four-wheel vehicles is not permitted?

Mr. Soloway stated: The ordinance states no goods, chattels, materials, supplies or items of any kind can be delivered either to or from the premises in connection with the home occupation except in a car, station wagon, van or other four-wheel vehicle. I don't know if a UPS or Fed Ex truck is one of those four items.

Mr. Marion stated: If you are a shopaholic you are getting a lot of deliveries from UPS and Fed Ex.

Mr. Soloway stated: The Board will decide if the two Fed Ex trucks a year is enough to deny an application.

Ms. Caldwell stated: You have to remember that the reason home occupations are restricted is due to the impact to an adjacent property. That is what you are looking at. Do the deviations from the requirement create impact to the adjacent property owners?

Mr. Tharp asked: What percentage of your overall business is the pesticide portion?

Mr. Lutz stated: I would guess 25% to 30%.

Mr. Tharp asked: Is there anything you need to clean on a regular basis that includes the pesticides.

Mr. Lutz stated: No.

Mr. Soloway asked: We have already acknowledged that you do not comply with the off- street parking. Can you comply with that?

Mr. Lutz stated: It may be difficult because of the layout.

Ms. Hartman addressed the issued.

Mr. Simmons questioned Mr. Lutz: Is it true that as a pesticide business you need to be licensed by the DEP, have a current license, and participate in continuing education courses? Does your full-time employee have a pesticide license? And does he continue with continuing education courses that are part of the core courses on safety on how to handle the pesticides?

Mr. Lutz stated: Yes to all the questions.

Chairwoman McCabe opened this portion up to the public. With no one stepping forward, this portion of the meeting was closed.

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Mr. Aspero had a lot of questions for Mr. Lutz. He summarized what has been said about the application. He stated that Mr. Lutz did not have engineering plans to show the square footage in order for the board to derive the 25% test.

Mr. Aspero asked: What do you have on the first floor of the garage in the middle of the first floor that is behind the doorway?

Mr. Lutz stated: My shop. I don't store any pesticides. I have my personal tools in there.

Mr. Aspero asked: What is behind the entrance door to the right side of the first floor of the principal residence?

Mr. Lutz stated: It is a stairway that goes up to the second floor. We also have an outside stairway from the ground level.

Mr. Aspero asked Mr. Lutz to repeat his testimony for the uses of the 2<sup>nd</sup> floor.

Mr. Lutz repeated his testimony.

Mr. Aspero asked Mr. Lutz when was the garage built?

Mr. Lutz stated: 1990. I obtained municipal approvals for the construction of the garage. I don't remember having to go before a board for a variance for a setback.

Mr. Aspero asked Mr. Lutz where he purchases his pesticides from and to describe the chemicals he purchases.

Mr. Lutz stated: Univar. I don't know where they are located. I call them and place the order. They are general use pesticides to treat houses with bugs. They are not chlordane. They are not DDT. I only use chemicals that are registered for the State of New Jersey. Some are powder and some are liquid. None are flammable. If the pesticides were misused they could cause harm to someone's health.

Mr. Aspero asked: Do you know if they are toxic chemicals under New Jersey Law and that if there was a spill on your property, you would have to call the DEP?

Mr. Lutz stated: Yes. The label law reads if I have a spill that is a certain size I would have to report it to the DEP; however, I am required to carry on each truck a spill kit which will contain up to 50 gallons.

Mr. Aspero asked Mr. Lutz questions about his business.

Mr. Lutz stated his business name is Jeff Lutz, LLC. A LLC is a limited liability company. I created this company by having my attorney form it for me.

Mr. Aspero asked: It is true this company undertakes three activities and is advertised in the yellow pages as Jeff Lutz, LLC Home Inspection, Home Heating Survey, and Lutz Exterminating.

Mr. Lutz stated: Yes.

Mr. Aspero asked: What would you say about business increases regarding additional quantities of pesticides?

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Mr. Lutz stated: If my business were to double next year, I still would need to store my chemicals in my truck. I just don't use that much. Currently, I have three gallons in each truck in liquid form. In the powder form, three pounds. I would not anticipate any more trips up and down the driveway if my business increased.

Mr. Aspero asked: Does Jeff Lutz, LLC have any other locations in New Jersey?

Mr. Lutz stated: No.

Mr. Aspero asked: Is it true that you and your wife own investment real estate?

Mr. Lutz stated: Yes.

Mr. Aspero asked: Is it true that the investment real estate is apartment rentals?

Mr. Lutz stated: Yes.

Mr. Lutz stated: My rental activity is limited to single family, two family, three and four family. I advertise when the apartment becomes available. I list my phone number for people to call and the number goes to my secretary who has a cell phone that I gave her. My secretary is Julie Norman. No calls come to the house for apartment rentals.

Mr. Aspero asked: I think there was an earlier statement by council that commercial vehicles are permitted in the R-2 zone.

Mr. Soloway stated: No. It was by the applicant's planner. There is an ordinance provision. Essentially, it allows the keeping of a commercial vehicle not to exceed 10,000 lbs. inside a garage in a residential zone.

Ms. Hartmann read Section 20-10.2b that references commercial vehicles parked in a residential zone.

Mr. Aspero asked: What is the weight of the Ford F150?

Mr. Lutz stated: 5,000 lbs per the registration. The other truck is 5,197 lbs.

Mr. Aspero stated: The 2<sup>nd</sup> line of the ordinance reads garaging of commercial vehicles will be permitted to park provided the structure is an enclosed solid structure with a full closed door and conforms to the zoning ordinance. We are in need of another variance.

Mr. Soloway stated: If the second vehicle is a commercial vehicle.

Mr. Lutz stated: Both vehicles are registered as commercial vehicles.

Mr. Soloway stated: Under the ordinance it would be required that those vehicles be parked in an enclosed solid structure with a closed door.

Mr. Aspero stated: Another bulk variance?

Mr. Soloway stated: For the carport structure.

Ms. Paternostro-Pfister stated: What is your interest in this property?

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Mr. Aspero stated: I am council to the objector. Hillside Avenue Associates. I am the brother of the objector.

Chairwoman McCabe asked if Mr. Lutz would you be willing to enclose the carport as a secondary storage area for his other commercial vehicle?

Mr. Lutz stated: Yes.

Mr. Tharp asked: If he encloses the carport does it lead to a requirement for a setback variance?

Mr. Soloway read Section 20-5.7c Projection into yards. I don't believe that enclosing the carport, provided you did not extend passed the furthest edge of the carport, would change the calculation of the set back.

Chairwoman McCabe stated: Are you saying there is no variance required either for the carport or if he encloses it in a garage?

Mr. Soloway stated: There is no change created in the footprint.

Discussion ensued on this matter.

Mr. Soloway stated: I agree there is non-compliance with the ordinance section that requires commercial vehicles essentially be garaged behind a closed door. I think the Board as part of this application can address that variance. I understand the argument "doesn't it require site plan" and that may or may not be technically true although it could be waived by the Board, I would suggest that if the Board does consider requiring the carport be enclosed that it would not be inappropriate to ask to see some kind of rendering so you know what you are looking at.

Mr. Aspero stated: Won't that change the footprint?

Mr. Soloway stated: We don't think it will. If it extended closer to the front property line then it would require a variance. We don't know at this point if it would.

Mr. Lutz stated: I could answer that question. If I was going to enclose the carport, I could put some  $\frac{3}{4}$  siding on the outside then it would be  $\frac{3}{4}$  inches closer to the road but if I enclosed it from the inside it wouldn't change the footprint.

Mr. Flynn asked: Is the depth and width of the carport long enough to house the vehicle and close the door within the same footprint as the structure stands today?

Mr. Lutz stated: Yes.

Mr. Soloway stated: My suggestion for the Board would be not to make a decision until you see what you are dealing with. I think it is entirely appropriate to ask the applicant to come back with the information next month. I don't think it is necessary to stop the hearing at this point.

Mr. Tharp stated: Could we make it part of the resolution that if the garage needs to be enclosed make it under the direction or the approval of the engineer?

Mr. Soloway stated: Mr. Simmons office would do that one way or another. The Board members would want to see what it is going to look like before Mr. Simmons signed off on it. You can't

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delegate the authority to Mr. Simmons to go out in the field and say ok unless it is the same footprint.

Discussion ensued on the garage.

Mr. Lutz stated: If I was asked to enclose the carport, I would be more than happy to do so.

Ms. Paternostro-Pfister, Esq., gave a recap on the variances. In terms of the home occupation, we have a conditional use variance because of the issues to the parking in the front of the property. Mr. Lutz has indicated that if it is required of him as a condition of this application that he would enclose the carport and any of the area that needs to be enclosed for the commercial vehicles to satisfy that provision. Our position on this application is that Jeff Lutz, LLC is one LLC, one business conducting three different services very similar to an attorney who practices in different areas of the law and advertises in different areas of the law. I don't think it would be necessary to ask for the variance for the purpose of that provision of the home occupation.

Chairwoman McCabe polled the Board if they felt it necessary for Mr. Lutz to come back next month with a plan for the carport.

The Board stated: Not needed.

Chairwoman McCabe stated: As of long the applicant is asking for conditional use variance for the parking in the front with a condition that he encloses the carport.

Mr. Soloway stated: Yes. The applicant is also agreeing there are no other deviations under the conditional use standard to the extent the Board interpret the ordinance, otherwise they can also ask for relief for those requirements.

Chairwomen McCabe stated: Also an interpretation of the part-time employee.

Ms. Caldwell stated: The language of the ordinance reads is "No person other than members of the family residing on the premises plus one outside employee shall be engaged in such occupation." The word engaged encompasses the part-time employee; however, when you are looking at land uses as I said earlier, you are really looking at impact. Is that something we are concerned about with our home occupation ordinance?

Ms. McCabe stated: It needs clarity as we move forward.

Ms. Paternostro-Pfister asked Mr. Lutz: What is the dimension of the office space that is proposed within the principal structure on the first floor?

Mr. Lutz stated: 13 x 24 feet.

Mr. Aspero presented his professional planner.

**SWORN:** Kenneth Nelson, Professional Planner, 2 Volcano Hill Road, Wantage, NJ.

Mr. Nelson presented his qualifications to the Board and the Board accepted them.

Mr. Nelson stated: Each municipality deals with home occupations differently. They need to be very tightly controlled or they can do serious damage to the neighborhoods they are located in.

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What is important to remember is whatever this Board decides not only affects this particular application but can potentially have some impact on the R-2 zone in general. I have visited the site and the neighborhood and I am familiar with the various regulations and planning policies that deal with this particular issue. As I looked into this with more detail it seems to get more complicated. I take exception with the applicant's planner and the Board's planner and I believe what we are looking at here is a complicated home occupation request not one that the ordinance anticipates as a typical home occupation. I am also concerned as I read through the application as to whether the application was complete. There are a lot of loose ends, missing information, the fact the applicant choose not to present a floor plan of the residence, left a lot of questions in my mind. Some of the questions were answered during the testimony tonight. In terms of any potential approval, I always get concerned when conditions of approval are based on verbal testimony. In terms of the overall picture, we have 9 conditions the application must meet. It is a D3 variance and yes, you are not dealing with a prohibitive use, you are dealing with a use that is allowed but the Board is not required to approve such a use if because of the particular circumstances related to this particular home occupation you feel this is not a use that should be accommodated within the R-2 Zone.

Mr. Nelson continued: The Board is being told this is one business under the umbrella of Jeff Lutz, LLC. The pest control part of it is problematic. I see them as three distinct business activities. It may be one business entity in terms of the legalities. I would suggest the pest control operation be separated out. I think it is a prohibitive use. I think it is a commercial use in a residential zone and is not what would be considered to fit under the umbrella of a home occupation. The two other business activities can fit under the D3 variance. I find multiple deviations with this application. From my count there are four to five from the nine deviations. In this particular case it seems to me if this is going to be approved there should be a long list of conditions in order for this Board to be assured that there would not be a negative impact on this area. The question is raised on how will that be monitored? Applications like this often get forgotten about after they get approved and they are not monitored as well as they should be. In conclusion, it is my opinion that this application does not meet the standards established by Coventry. This proposal is not appropriate for this particular zone and it should be denied. That is not even considering the fact that one of those business activities can't even be approved under the D3 provision, it can be argued it is a D1 but that is different matter.

Mr. Aspero asked Mr. Nelson to talk about the conditions.

Mr. Nelson stated: 20-20.2 is a technical deviation. The applicant has admitted he has a part-time employee that works outside of the home. I don't know whether that employee needs to come to the house for training or meetings. The applicant was not forthcoming of any such activities. In my mind the application does not comply with 20-20.2a. 20-20.2b the use of the dwelling unit shall be clearly incidental and subordinate to the use for the residential purposes by its occupants. I guess they meet this. There has been no floor plan or detail on how the residence is being used and what percentage is used for the home occupation. Not more than 25% for the floor area ratio of the principal structure of a lot shall be used in the conduct of a home occupation. Home occupations shall not be allowed in accessory structures including a garage located on a lot. The vehicles are part of the business that are in the garage so it does not meet that provision.

Mr. Aspero asked Mr. Nelson to read the definition of incidental.

Mr. Nelson read the definition. The trucks are a visible part of the business and are located in a garage right next to the road. I visited the site and what was most visible to me was this garage

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that will house commercial vehicles. You could almost argue that this business is starting to approach not being incidental, that it is becoming equal to the residential use on the property.

Mr. Aspero asked: What type of home occupation would you deem to be incidental?

Mr. Nelson stated: Computer related businesses, businesses that might actually involve some assembly or fabrication but are on a very limited basis, professional type uses. There are many businesses that don't have the characteristic in case of the pesticide business of being almost an industrial or heavy commercial type use. Item c - no signage but the trucks are there. It is not clear to me how often those trucks would be coming and going. Item d - no off-street parking shall be permitted in the front yard, setback or in the front of the building. This part is violated because this garage structure does not meet the setback requirement for an accessory structure.

Mr. Aspero asked: Why does it not meet the setback requirement?

Mr. Nelson stated: The setback is 12 feet and the requirement is 20 feet for an accessory structure and it is also in the front yard. Item g complies. The last one is there should be no more than one home occupation in any one dwelling unit and in my opinion it violates that provision.

Mr. Aspero to Mr. Nelson - You were hired by Hillside Associates and you are looking at a survey prepared by Catalano in 1984. Can you describe where the Lutz's property is?

Mr. Nelson stated: To the west of Hillside Avenue property which runs in a northerly direction.

Mr. Aspero asked: The private road which the Board has been told is an unimproved road is approximately how long?

Mr. Nelson stated: 700 to 800 feet.

Mr. Aspero asked: Does that run adjacent to the Hillside Avenue Associates' property?

Mr. Nelson stated: Yes.

Mr. Aspero asked: Is it true there is only one single family dwelling on the Hillside Avenue Associates' Property?

Mr. Nelson stated: Yes.

Mr. Aspero asked: Could the property that is unimproved be subdivided into at least one perhaps two buildable conforming lots?

Mr. Nelson stated: Yes.

Mr. Aspero asked: What are the impacts from your professional perspective as to this particular application?

Mr. Nelson stated: My view is the pesticide operation is moving well beyond the incidental requirement for a home occupation. A house immediately adjacent to Lutz's property would potentially have the full view of the commercial vehicles and the activity associated with that which would include traveling up and down Overlook Road.

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Mr. Aspero asked: What would fire trucks or emergency vehicles do if they had to come down the single lane road?

Mr. Nelson stated: Overlook Road is a dead-end so any blockage of that road would create some health and safety issues.

Mr. Aspero asked: Looking at the Coventry Square case it says in respect of the negative criteria a variance can be granted without substantial detriment to the public good. The focus is on the effect on surrounding properties. Is it your testimony that there is a zoning impact and effect on the Hillside Avenue Associates' property and this application constitutes a character change to this R-2 residential zone?

Mr. Nelson stated: Yes.

Mr. Aspero asked: Do you think any reasonable conditions could be imposed on the applicant to lessen the impacts that you are concerned about and lessen the adverse circumstances regarding traffic, noise, etc.

Mr. Nelson stated: I would not be comfortable trying to impose conditions that would protect the neighborhood because in my views they would be very difficult to monitor and enforce. The carport's footprint will not change however you are changing the visible impact of that structure. The carport is open and when you enclose it it becomes a solid mass which is 12 feet from the road when it is suppose to be 20 feet back.

Mr. Marion to Mr. Nelson: You are testifying that Hillside Associates has the lots in the back at the end of the street?

Mr. Nelson stated: No. As you are coming up the street, so before.

Mr. Aspero stated: I am perfectly willing to enter this survey of the property into evidence. I think it would be very helpful for the Board to see.

Ms. Pfister asked to see the survey. I would object that there is not a surveyor here to testify to it and it is not a sealed copy so it can't be admitted as evidence.

Mr. Soloway stated: Technically Ms. Pfister is correct.

Mr. Aspero stated: I will submit it as a reproduction and the Board can utilize it to whatever the Board desires. I would really appreciate it we could reveal to the Board the extent of the property configuration owned by Hillside Avenue Associates and why we are here tonight.

Mr. Soloway stated: Ms. Pfister is technically correct in that I do not think it meets the criteria for an exhibit for the hearing. On the other hand, I do not have a problem if it gets passed around with identification by Mr. Nelson as to which lot and block is the subject of this application and which is the Hillside Avenue Associates property.

Mr. Aspero stated: Hillside Avenue Associates is Lot 34 in Block 103 and Mr. Lutz's property is Lot 2 Block 103.

Mr. Soloway asked: How far is the separation between the two property lines for those two lots?

Mr. Nelson stated: They are adjacent lots.

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Mr. Soloway asked: How far is the garage from the lot line?

Mr. Nelson stated: Approximately 186 feet from the easterly side of the garage to the Hillside Property Line.

Mr. Marion asked Mr. Aspero how long he lived in house.

Mr. Aspero stated: My mother and father moved to the house in 1939.

Mr. Marion asked: The Lutz's business has been there for about 30 years and has there ever been comments made about the business until tonight?

Mr. Aspero stated: I do not know.

Mr. Marion to Mr. Nelson: You mentioned a lot of noise traveling down the road once a day, back and forth.

Mr. Nelson stated: The applicant has testified the number of trips however businesses change with more traffic on an unimproved road.

Mr. Marion stated: If Hillside Associates' were to build three more houses on the property that would create a lot of traffic.

Mr. Nelson stated: Potentially there could be more traffic there. But it would be residential traffic.

Mr. Marion stated: So that would be husbands and wives going to work, teenagers coming home at 2 and 3 o'clock so potentially that development could be more harmful to the road than two trucks traveling on it twice a day.

Mr. Nelson stated: Potentially.

Mr. Flynn stated: It was smart for Mr. Lutz that his clients are getting dual services for his home inspection business.

Mr. Nelson stated: I understand that point. I am still troubled by the day to day business. In his advertisement he talks about rodent removal in addition to termites. I do not know the full scope of the business. Are the rodents removed with cages, are cages stored on the property? There was no testimony to that effect. There was an indication that there were no supplies on the property.

Chairwoman McCabe made a comment. Any variances we give to this applicant would run with the land and would affect the future of the property not the neighbor. I found this interesting because I think the Town is moving into a direction where we are more lenient with home businesses.

Mr. Soloway stated: Although Mr. Nelson's comment is correct about variances. Home occupation authorization by their nature is specific to that particular occupation. It is not a case where you are approving a building that will stay there. It is a form of use variance and you are approving a use, if you approve it, but the use that you are approving here isn't any home occupation it would be this particular home occupation. That could be a subject of condition if the Board approves this. There has been testimony from both planners on what the overall intent of the ordinance is. It seems to be more important of what goes on outside than what

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goes on inside except to the extent you do not exceed the 25% limitation. It is more important on what you see and the impact it could possibly have on other properties. If you do approve this application your emphasis in terms of conditions should be on the externals, not necessarily on how many phone calls you get, etc.

Mr. Aspero asked Mr. Soloway: Regarding the running with the land issue, would you agree that the buyers from Mr. and Mrs. Lutz, if this were approved tonight, could operate the same activities with two trucks without coming to this Board. Running with the land means the land is now burdened with this approval which allows two trucks, one or two employees as a home occupation. Let's say the successor's interest who purchased the property want to do the same thing.

Mr. Soloway stated: If they live there and they want to buy the business then the answer is yes.

Mr. Aspero asked: They have to buy the business in order to get the benefit of running with the land?

Mr. Soloway stated: Or run an identical business.

Mr. Aspero stated: And their successors could do the same, and so on and on. Sort of like a pre-existing legal nonconforming use.

Mr. Soloway stated: The Board could require any subsequent buyers to come back before the Board to review the application to make it the same business. Remember, there are ordinance standards that need to be complied with and I don't see that you can't have a condition that would require that kind of review.

Chairwoman McCabe opened up this portion of the meeting to the public for any questions to Mr. Nelson.

Angelo Paternostro-Pfister, Esq, stated: How did you come to the determination that those two pick-up trucks had an impact.

Mr. Nelson stated: I don't recall saying that. I said that these trucks would be associated with the business.

With no more public coming forward, the public portion of the meeting was closed.

Mr. Aspero stated his objection was complete.

Mr. Hardmeyer had a few questions. How many phone numbers do they have, how many post office boxes do they conduct business under, how many email addresses do they have, what does the billing statement say, do they all come to one billing address and how many tax returns are filed. If it is all one, then it is one business.

Mr. and Mrs. Lutz both said one.

Mr. Aspero stated: If he has three schedules called schedule C Profit and Loss then I would submit there are three activities. That is the way it is filed. We don't have any of this in the testimony. I think counsel should put him back on so he can talk.

Chairwoman McCabe opened up this portion to the public.

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First public

**SWORN:** Dennis R. McConnell, 11 Overlook Road, Newton, New Jersey. I am the neighbor most closely affected by Mr. Lutz. I am to the west of him. I pass by him every day. I am the only neighbor that passes by him every day. I see his trucks there, his wife there, every now and then I see a worker there. I have been Mr. Lutz's neighbor since 2004 and have never had a problem. We are good neighbors. I have never seen any trucks make deliveries there. UPS delivers to my house and the US Postal Service delivers packages to my house. If you don't allow the US Postal Service to deliver packages then I think that is a problem. In regards to the visual impact, I have no problem with Mr. Lutz's trucks. He keeps them nice. I don't even think it is necessary to side off the carport. I am the guy that passes the carport and I don't think it is necessary. It is not a visual impairment to me.

Mr. McConnell brought up another issue that deals with permitted accessory uses which is separate and apart from home occupations. The permitted accessory use deals with commercial vehicles.

Second Public

**SWORN:** Amanda McConnell, 11 Overlook Road, Newton, New Jersey. I am the one that goes up the road most frequently and I very seldom pass Mr. Lutz on that road and more remotely his worker.

Third Public

**SWORN:** Edward C. Vanni, 39 Hillside Avenue, New Jersey. I reside at the end of Hillside Avenue just as it curves up to Overlook. I have been a resident there along with my wife and children for 10 years. I have known the Lutz's for that many years. My wife has known the Lutz's longer than 10 years. I think we are splitting hairs here. We are looking at the impact of vehicles traveling up and down the road. I see no impact whatsoever with the activity of Mr. Lutz's business. I am in the environmental business myself and I understand a little bit about what Mr. Lutz does. The concerns are the concerns that everybody would have that do not understand environmental type businesses. It is so minimal. Just about anyone in this room can go to the Home Depot or Lowe's and buy the same chemicals. I don't see any impact whatsoever in our neighborhood with Mr. Lutz's business and I fully support his application.

Mr. Soloway asked Ms. Pfister if she has a rebuttal.

Ms. Pfister stated: No.

Mr. Aspero crossed examined Mr. Lutz.

Mr. Aspero asked: Do you file a tax return for Lutz LLC and what form is it on?

Mr. Lutz stated: Yes. I am not qualified to answer that.

Mr. Aspero stated: I submit that we can't ascertain the answers that I would like to ask. We can't resolve the question tonight. I think it is very important because there has been an enormous amount of testimony regarding the umbrella of one little company that is doing three maybe four activities. This Board is entitled to see exactly what kind of report is being made to the IRS. We don't need to see the data or the numbers. We need an accountant to answer my questions.

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Mr. Soloway stated: The Board may be entitled to see the tax returns if they want to.

The Board does not feel it is necessary to see the tax returns.

Mr. Aspero stated: I object to that.

Ms. Pfister asked Mr. Lutz if he has one insurance policy.

Mr. Lutz stated: Yes.

Ms. Pfister asked: As you were setting your business up, is it true that your attorney advised that you were setting this up as one business with different services?

Mr. Lutz stated: That is correct.

Mr. Aspero objected because he said the attorney is not here to answer the question. That is a very vague question. I have created hundreds of LLCs in my company and they sometimes perform one activity and sometimes perform dozens.

Mr. Soloway stated: There is a single entity Jeff Lutz, LLC. Mr. Lutz considers it one business and he has an accountant prepare his tax returns and he doesn't have the expertise to understand in detail how the returns are prepared. I don't agree that the Board is required to, if the Board does not agree, have an accountant come in and explain this.

Chairwoman McCabe asked: Is it the intention of the Board that it is not necessary to have an accountant come in and testify?

The Board agreed it is not necessary.

Ms. Pfister asked: Mr. Lutz, have you ever received notice that someone complained about your business?

Mr. Lutz stated: No.

Chairwoman McCabe stated: The applicant is asking for conditional use variance to allow parking in front of the building and the Board has indicated a condition of enclosing the carport, is it the Board's desire of making any approval conditional on no additional business being added to Jeff Lutz, LLC, as was discussed. Does anyone have opinion about this?

Mr. Aspero asked about the missing Board members.

Mr. Soloway stated: The two empty seats are the Mayor and Deputy Mayor who had to recuse themselves.

Mr. Russo stated: I don't think we need to restrict the additional business unless they create an adverse impact meaning additional vehicles, additional staff. I thought the question tonight was is there an adverse impact on the neighborhood and the surrounding properties? If he wants to go into other aspects of people that are buying homes and what they might need in terms of service as long as it doesn't require a third vehicle or additional staff, I don't have a concern.

Mr. Flynn stated: I agree with Mr. Russo.

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Mr. Soloway stated: The application is for conditional use approval with variances from at least one conditional use standard and perhaps a second variance as well. The Board needs to decide whether to grant relief from the standard that it admittedly violated that prohibits parking of vehicles in the front yard and you also need to deal with the deviation that was raised by Mr. Aspero relating to the fact that there is indisputably a commercial vehicle that is not being parked within an enclosed garage as required by the ordinance. You can either deal with that by granting a variance to allow it to stay as is or require as part of any approval that the carport be enclosed in a manner where it meets the requirements of the ordinance. You are also required to determine whether the ordinance prohibits that extra employee or only prohibits the extra employee on-site and if it prohibits the extra employee you would then have to decide whether that merits variance relief. There are a couple of other deviations which Mr. Nelson admitted were technical and you also have to deal with the issue of whether this is one home occupation or more than one occupation. If it is more than one occupation then you have to decide whether or not to grant variance relief. Once you have decided all those things, if the decision is to grant an approval then you should discuss conditions.

Chairwoman McCabe went through each item.

Board gave their opinion on the carport. The consensus was it is not necessary to enclose the carport.

Board gave their opinion on the part-time employee.

Mr. Russo stated: I do not think there is an issue with the part-time employee not being on the site. My sense is with this type of a business and perhaps other ones that are either occurring in the community or coming down the pike, we need to maximize flexibility for entrepreneurs like Mr. Lutz, so whatever we can do to accommodate his business needs, I will be supportive.

The remaining Board agreed with Mr. Russo's statement.

Mr. Le Frois stated: I think the intent is to keep the number of employees at the residence where the business is taking place and I would say if that changes we would again have to revisit it.

Mr. Soloway stated: Even if the Board grants relief there is an ongoing obligation to comply with the ordinance. The applicant would not be allowed to have another employee on site. The applicant would not be allowed to extend beyond 25% of the dwelling. There a number of things that would be prohibited unless you give permission.

Mr. Flaherty stated: I agree the purpose is to limit the impact on the site. Since it is an off-site employee it has no impact so it would be reasonable to allow that.

Discussion ensued.

Mr. Le Frois stated: I do believe more than one occupation is involved here. I understand it is under one umbrella company but technically they are individual types of expertise needed to do each of the things Mr. Lutz does. I don't have a problem providing a variance for that but I don't consider it one occupation.

Discussion ensued on the occupations that Mr. Lutz performs and whether or not it is considered one occupation.

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Mr. Soloway outlined the motion for the Board. The motion would be to approve the application and grant conditional use approval. As part of the conditional use approval, grant a variance from the ordinance condition that precludes parking the vehicles in the front yard and grant a variance from the ordinance requirement which is a separate ordinance that the commercial vehicles be enclosed in a garage. You can also make a finding, as part of the motion; your interpretation of the ordinance based upon the intent to limit off-site impacts is the employee limitation applies to the number of employees on site. The business happens to have employees off-site who don't come there. That does not implicate the ordinance. You would also determine that there is compliance with the condition that there be no more than one business and with the finding even if it was deemed to be two or three separate businesses, that it would meet the standards for the granting of variance relief. The Fed Ex truck is a technical deviation and it is appropriate to grant relief. The approval would be conditioned upon the typical approval conditions with compliance of all laws. All representation made at this hearing are part of the application and Mr. Lutz will be bound to them. You will limit on-site storage of business type materials, other than record type material. There will be continuing compliance of all other requirements of the home occupation ordinance. That would include no increase of employees; this operation will be limited to two commercial vehicles not to exceed 10,000lbs each in weight. One vehicle will be parked in the garage and in compliance with the ordinance and the other will be parked in the carport. The carport need not be enclosed but it should have the appropriate buffering to screen it from view of off-site and meet the approval of the inspection from the Town Engineer. There should also be a condition requiring any theoretical successor to come back before this Board before being allowed to continue.

**Mr. Marion made a motion to approve what Mr. Soloway outlined for the motion. Mr. Le Frois seconded the motion.**

**AYE:** Mr. Le Frois, Mr. Flynn, Mr. Marion, Mr. Tharp, Mr. Russo, Mr. Caffrey, Chairwoman McCabe

Chairwoman McCabe opened up the public portion of the meeting to the public; with no public coming forward the public portion is closed.

**ADJOURNMENT**

**Mrs. Le Frois made a motion to adjourn the meeting. Mr. Flynn seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 11:06 PM.** The next regularly scheduled meeting will be held on October 19, 2011, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary

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**EXHIBITS**

**Exhibit A-1 to A-5**, Photographic Display 5 Overlook Road Extension, prepared by Jill A. Hartmann, PP, AICP, and dated September 20, 2011.

**Exhibit A-2**, single family residence with a large pickup truck next to the garage, dated September 20, 2011.